80-1088

Supreme Court, U. S.
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No.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

GERRY A. BLODGETT et ux.,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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Petitioner pro se

QUESTIONS PRESENTED

(1) Is a registered patent agent a member of the legal profession?

(2) Are educational expenses which are incurred by a registered patent agent deductable business expenses when the expenses are both:

(a) ordinary and necessary business expenses, and

(b) part of a program which will qualify the patent agent to be a patent attorney and a state-licensed attorney?

PARTIES

The United States of America, Katharine A. Blodgett, and Gerry A. Blodgett.

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Your petitioner, GERRY A. BLODGETT et ux., prays that a Writ of Certiorari to review the judgment of the United States Court of Claims entered in this case on August 15, 1980, a petition for rehearing having been denied October 3, 1980.

Opinion Below

The opinion of the United States Court of Claims is not reported and its denial of rehearing is not reported. The opinion and order denying rehearing are set forth in the Appendix.

JURISDICTION

The judgment of the United States Court of Claims was entered on August 15, 1980. A timely petition for rehearing was denied on October 3, 1980, and this petition for certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1255(1).

STATUTES AND REGULATIONS INVOLVED

The following Statutes and Regulations are involved:

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 161. ALLOWANCE OF DEDUCTIONS.

In computing taxable income under section 63(a), there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) In General.--There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including--

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000.

* * *

Treasury Regulations on Income Tax (1954 Code) (26 C.F.R.):

§ 1.162-5. Expenses for education.

(a) General Rule. --Expenditures made by an individual for education (including research undertaken as part of his educational program) which are not expenditures of a type described in paragraph (b)(2) or (3) of this section are deductible as ordinary and necessary business expenses (even though the education may lead to a degree) if the education --

(1) Meets the express requirements of the individual's employer, or the requirements of applicable law or regulations, imposed as a condition to the retention by the individual of an established employment relationship, status, or rate of compensation.

(b) Nondeductible educational expenditures.--

(1) In general. --Educational expenditures described in subparagraphs (2) and (3) of this paragraph are personal expenditure, or constitute an inseparable aggregate of personal and capital expenditures and, therefore, are not deductible as ordinary and necessary business expenses even though the education may maintain or improve skills required by the individual in his employment or other trade or business or may meet the express requirements of the individual's employer or of applicable law or regulations.

(2) Minimum educational requirements. (i) The first category of nondeductible educational expenses within the scope of subparagraph (1) of this paragraph are expenditures made by an individual for education which is required of him in order to meet the minimum educational requirements for qualification in his employment or other trade or business. The minimum education necessary to qualify for a position or other trade or business must be determined from a consideration of such factors as the requirements of the employer, the applicable law and regulations, and the standards of the profession, trade, or business involved. The fact that an individual is already performing service in an employment status does not establish that he has met the minimum educational requirements for qualification in that employment. Once an individual has met the minimum educational requirements for qualification in his employment or other

trade or business (as in effect when he enters the employment or trade or business), he shall be treated as continuing to meet those requirements even though they are changed.

* * *

(3) Qualification for new trade or business. (i) The second category of nondeductible educational expenses within the scope ofsubparagraph (1) of this paragraph are expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business. In the case of an employee, a change of duties does not constitute a new trade or business if the new duties involve the same general type of work as is involved in the individual's present employment. For this purpose, all teaching and related duties shall be considered to involve the same general type of work. The following are examples of changes in duties which do not constitute new trades or businesses:

(a) Elementary to secondary school classroom teacher.

(b) Classroom teacher in one subject (such as mathematics) to classroom teacher in another subject (such as science).

(c) Classroom teacher to guidance counselor.

(d) Classroom teacher to principal.

(iii) the application of this subparagraph to individuals other than teachers may be illustrated by the following examples:

Example (1). A, a self-employed individual practicing a profession other than law, for example, engineering, accounting, etc., attends law school at night and after completing his law school studies receives a bachelor of laws degree. The expenditures made by A in attending law school are nondeductible because this course of study qualifies him for a new trade or business.

Examples (2). Assume the same facts as in example (1) except that A has the status of an employee rather than a self-employed individual, and that his employer requires him to obtain a bachelor of laws degree. A intends to continue practicing his nonlegal profession as an employee of such employer. Nevertheless, the expenditures made by A in attending law school are not deductible since this course of study qualifies him for a new trade or business.

* * *

STATEMENT OF CASE

During calendar year 1975 petitioner was employed on a full-time basis as a Registered Patent Agent. Petitioner took a number of law courses that year. The basis of his tax refund claim is that the cost of those courses is deductible under I.R.C. § 162 as ordinary and necessary expenses paid in carrying on the business of Registered Patent Agent. The courses

were: Evidence (4 credits), Product Liability (2 credits), Trusts (3 credits), Business Assoc. II (Corporations) (3 credits), Practice and Procedure (2 credits), Administrative Law (3 credits), Family Law (2 credits), Secured Transactions (2 credits), Landlord and Tenant (2 credits), Clinical Studies (2 credits), Conflicts of Law (3 credits), Professional Responsibility (2 credits), and Federal Taxation (3 credits). The Court of Claims denied the deduction because the courses were part of a course of study which would lead to qualifying petitioner as an attorney, allegedly a new profession.

REASONS FOR GRANTING WRIT

1. The decision below is in conflict with a decision of this Court.

The decision below is based on the premise that a Registered Patent Agent is not a member of the legal profession. This Court, in Sperry v. Florida, 373 U.S. 379 (1963), found that the work of a Registered Patent Agent is the practice of law, and, but for federal preemption, could only be carried out by a state-licensed attorney. If the legal profession consists of those who are authorized to practice law, then the decision below is in direct conflict with Sperry.

II. This case is important to Registered Patent Agents.

Registered Patent Agents are both technologists and lawyers, and they have a desire, and, in fact, a legal obligation,

to maintain and improve their skills in both areas. The cost of technical courses is apparently deductible; Likewise are law courses if they are of the unstructured, ungraded vacation resort variety. But if the patent agent wishes to take rigorous legal courses at an accredited law school, with attendance requirements and grades, the expense is, according to the IRS, neither a business expense nor a capital expense.

In a greater sense, however, the present question is only part of the broad dispute over the status of Patent Agents. Congress created that status but did not define it. Over the years, a struggle has been waged over that definition. The question of state-licensure was resolved by this Court in Sperry, supra. The question of the applicability of attorney-client privilege is being actively disputed. See In re Ampicillin Antitrust Litigation, 81 F.R.D. 377, 202 U.S.P.Q. 134 (D.C.D.C. 1978), and cases cited therein. The present issue, while independent of the other questions, is a necessary part of the overall status question.

III. This case is important to our Nation.

Our nation depends heavily on its system of technological development to maintain its military strength, economic independence and quality of life. Our technological system depends on an efficient and effective patent system to encourage discovery, development, and disclosure of new technology. The efficiency and effectiveness of the patent system, in turn is dependent on the efficiency and effectiveness of the patent agents and patent attorneys

who control the communication between the inventors and the U.S. Patent and Trademark Office. If the tax laws are interpreted to discourage patent agents in the development and maintainence to their skills, the undesirable weakening of our nation is both obvious and inevitable.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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Petitioner pro se

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APPENDIX

GERRY A. BLODGETT and KATHARINE A. BLODGETT	)	
	)	Income tax refund; non-deductibility of of law courses taken by registered patent agent.
v.	)	
THE UNITED STATES	)	

Gerry A. Blodgett, Pro se.

Michael V. Marion, with whom was Assistant Attorney General M. Carr Ferguson, for defendant. Theodore D. Peyser and Donald H. Olson, of counsel.

Before NICHOLS, Judge Presiding, KASHIWA and SMITH, Judges.

ORDER

During calendar year 1975 petitioner[1/] was employed on a full-time basis as a registered patent agent. Petitioner took a number of law courses that year. The basis of his tax refund claim is that the cost of these courses is deductible under I.R.C. § 162 as ordinary and necessary expenses paid in carrying on the business of a registered patent agent. Because we grant its motion, denying petitioner's entitlement to a tax refund.

Treas. Reg. §§ 1.162-5(b)(1) and (3) considered together provide that "expenditures made by an individual for education which is part of a program of study being pursued by him which will lead to qualifying him in a new trade or business" are not deductible under I.R.C. § 1.62. Treas. Reg. § 1.262-1(b)(9) provides that educational expenses are deductible, if at all, under I.R.C. § 162. Since petitioner makes only one challenge

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1/ Petitioner Katharine A. Blodgett is a party to this action solely by virtue of having filed a joint tax return with her husband, Gerry A. Blodgett, for 1975. Hereafter, all references to "petitioner" will be to Gerry A. Blodgett.

to the validity of these regulations, which as explained in note 3 infra has no merit, these regulations are binding on petitioner. Therefore, if his law courses would lead to qualification for a new trade or business, then the cost of the courses is nondeductible.

The courses taken were part of a course of study which would lead to qualifying petitioner as an attorney.2/ Nothwithstanding this, petitioner insists the courses did not lead to qualifying him for a new trade or business. Rather, petitioner contends the courses merely maintained and improved his pre-existing skills. Per petitioner, this is because (1) the courses were taken solely to qualify him to practice as a patent attorney and (2) employment as a patent attorney involves the same general type of work as that he already performs as a registered patent agent.

The difficulty with petitioner's argument is his attempt to so narrowly describe the trade or business his law courses would qualify him for. While it may be true the work performed by a patent attorney practicing before the United States Patent Office is similar to that performed by a registered patent agent, once petitioner becomes an attorney he would not be restricted to practice as a patent attorney. Rather, as an attorney, he would be able to practice in any of the numerous fields of law open to lawyers generally, areas in which he could not have practiced as a registered patent agent.3/ This is because notwithstanding

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2/ The courses were: Evidence (4 credits), Product Liability (2 credits), Trusts (3 credits), Business Assoc. II (Corporations) (3 credits), Practice and Procedure (2 credits), Aministrative Law (3 credits), Family Law (2 credits), Secured Transactions (2 credits), Landlord and Tenant (2 credits), Clinical Studies (2 credits), Conflicts of Law (3 credits), Professional Responsibility (2 credits), and Federal Taxation (3 credits).

3/ Petitioner argues that even though the educational program he undertook leads to qualifying him as both a general practice attorney and a patent attorney, we should look only to his becoming qualified as a patent attorney. Petitioner insists to attach relevancy to his becoming qualified as a general practitioner is inconsistent with that portion of Treas. Reg. § 1.162-5(b)(3) which provides that education which

qualifies a teacher for certain changes in duty does not constitute qualification in a new trade or business. Petitioner contends that in light of this separate rule for teachers, attaching importance to his becoming qualified as a general practitioner "can only be justified if the regulation makes those in the teaching profession a separate and favored class of taxpayers, a classification which would be unconstitutional and beyond the power given by the statute." The short answer is that even assuming this separate rule for teachers is unconstitutional, an issue we expressly do not reach, it in no way affects the validity of this regulation as applied to petitioner. If unconstitutional, only this one portion of the regulation applicable solely to teachers would be struck down. The remainder of Treas. Reg. § 1.162-5(b)(3), including that part barring petitioner's deduction, would remain valid.

the narrow area of overlap in the patent field, a registered patent agent is simply not an attorney. See Sperry v. Florida, 373 U.S. 379 (1963). Since (1) the law courses lead to qualifying petitioner to practice in all areas open to lawyers, notwithstanding his subjective intention to narrowly restrict his future legal practice, and (2) these are predominantly areas of practice not open to registered patent agents, we hold these courses were part of a course of study leading to qualifying petitioner in a new trade or business.

IT IS THEREFORE ORDERED that defendant's motion is granted, petitioner's motion is denied, and the petition is dismissed in its entirety.

BY THE COURT

Philip Nichols, Jr.
Judge, Presiding

IN THE UNITED STATES COURT OF CLAIMS

No. 450-79T

GERRY A. BLODGETT AND
KATHARINE A. BLODGETT

v.

THE UNITED STATES

Before NICHOLS, Judge, Presiding,
KASHIWA and SMITH, Judges.

ORDER

This case comes before the court on plaintiff's motion, filed September 2, 1980, for rehearing pursuant to Rule 151(b) with reference to the order entered herein on August 15, 1980, dismissing the petition. Upon consideration thereof, together with the response in opposition thereto, without oral argument,

IT IS ORDERED that plaintiffs' said motion for rehearing be and the same as denied.

BY THE COURT

Philip Nichols, Jr.
Judge, Presiding

No. 80-1088

In the Supreme Court of the United States

OCTOBER TERM, 1980

GERRY A. BLODGETT AND KATHERINE A. BLODGETT,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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TABLE OF AUTHORITIES

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In the Supreme Court of the United States

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No. 80-1088

GERRY A. BLODGETT AND KATHERINE A. BLODGETT,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The question presented in this federal income tax case is whether petitioner[1] may deduct the costs of law school courses taken by him in 1975 as ordinary and necessary expenses in his trade or business of being employed as a registered patent agent.[2]

The relevant facts may be summarized as follows: During 1975, petitioner was employed full time as a registered patent agent (Pet. 7). During that year, petitioner also took

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[1]"Petitioner" refers to Gerry A. Blodgett. Katherine A. Blodgett is a party solely because she filed a joint income tax return for 1975 with her husband (Pet. App. 2).

[2]A registered patent agent is an individual allowed to prepare and prosecute patent applications before the United States Patent Office. Although this work may constitute a species of the practice of law (*Sperry* v. *Florida*, 373 U.S. 379, 383 (1963)), patent agents are not required to be attorneys or members of the bar. See 37 C.F.R. 1.341(b).

numerous law school courses[3] as a part of a course of study which would lead to qualifying as an attorney (Pet. App. 2). On audit, the Internal Revenue Service disallowed petitioner's claimed deduction of his law school tuition expenses. In this suit for refund brought by petitioner to recover the ensuing deficiency, the Court of Claims upheld the Commissioner (Pet. App. 1-5).

The decision below correctly held that petitioner was not entitled to a deduction for the law school tuition expenses. The Treasury Regulations on Income Tax, Section 1.162-5(b)(1) and (3) (26 C.F.R.), provide that the expenses of a course of study which qualifies a taxpayer for a new trade or business shall be nondeductible. Petitioner does not challenge this Regulation, which has been upheld to deny the deductibility of law school expenses to a variety of taxpayers. See, *e.g.*, *Melnik* v. *United States*, 73-2 U.S.T.C. para. 9520 (C.D. Cal. 1973), aff'd per curiam, 521 F. 2d 1065 (9th Cir. 1975), cert. denied, 425 U.S. 911 (1976) (internal revenue agent); *Anderson* v. *United States*, 75-2 U.S.T.C. para. 9578 (N.D. Cal. 1975) (orthopedic surgeon); *Taubman* v. *Commissioner*, 60 T.C. 814 (1973) (accountant); *Augen* v. *Commissioner*, 33 T.C.M. 1022 (1974) (insurance claims adjuster). Instead, petitioner argues (Pet. 8-9) that under this Court's decision in *Sperry* v. *Florida*, 373 U.S. 379 (1963), he is already practicing law and that his law school courses did not prepare him for a new trade or business.

To be sure, this Court in *Sperry* v. *Florida*, *supra*, 373 U.S. at 383, indicated that practice as a registered patent agent was the practice of law for state licensing purposes.

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[3]The courses included Evidence, Product Liability, Trusts, Business Associations II, Practice and Procedure, Administrative Law, Family Law, Secured Transactions, Landlord and Tenant, Clinical Studies, Conflicts of Law, Professional Responsibility and Federal Taxation (Pet. App. 2-3, n.2).

But it is also clear that the trade or business of an attorney is far broader than, and different from, the trade or business of a registered patent agent. The Court in *Sperry* expressly recognized this distinction when it noted (373 U.S. at 384-385) that regulations issued by the Commissioner of Patents permitted non-attorney agents to practice before the Patent Office and held that state attorney licensing laws must yield to those regulations in matters concerning practice before that office.

Thus, the conclusion that petitioner's law school studies prepared him for a new trade or business is not at variance with *Sperry*. Hence, the courts which have considered the matter have repeatedly ruled that patent agents, patent trainees, and patent examiners[4] may not deduct the costs of law school attendance. *Weiszmann* v. *Commissioner*, 483 F. 2d 817, 819-820 (10th Cir. 1973); *Martin* v. *Commissioner*, 24 T.C.M. 982 (1965), aff'd per curiam, 363 F. 2d 35 (4th Cir. 1966); *Rombach* v. *United States*, 440 F. 2d 1356, 1359-1360 (Ct. Cl. 1971); *Weiszmann* v. *Commissioner*, 52 T.C. 1106, 1108-1111 (1969), aff'd per curiam, 443 F. 2d 29

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[4]Patent agents and patent trainees prepare and prosecute patent applications for various applicants. Patent examiners evaluate these applications for the Patent Office.

(9th Cir. 1971); *Lunsford* v. *Commissioner*, 32 T.C.M. 64 (1973); *Montgomery* v. *Commissioner*, 64 T.C.M. 599 (1964); *Lezdey* v. *Commissioner*, 23 T.C.M. 485 (1964).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

FEBRUARY 1981

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